

ORIGINAL
RECEIVED
JUN 19 1992

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 92-50
)	
GOLDEN CORNERS BROADCASTING, INC.)	FILE NO. BPH-901218MH
)	
FISHER COMMUNICATIONS OF)	FILE NO. BPH-901219MB
CLEMSON, INC.)	
)	
CLEMSON BROADCASTING, INC.)	FILE NO. BPH-901219MD
)	
)	
For Construction Permit for a)	
New FM Station on Channel 285A)	
Clemson, South Carolina)	

To: Honorable Walter C. Miller
Administrative Law Judge

COMMENTS OF CLEMSON BROADCASTING, INC.

Clemson Broadcasting, Inc., ("CBI") by Counsel, and pursuant to the Memorandum Opinion and Order, FCC 92M-651 (Released June 9, 1992) ("MO&O") of the Presiding Judge, hereby respectfully submits its Comments regarding the Joint Petition for Approval of Settlement among the parties to this proceeding.

1. The Presiding Judge's MO&O set forth a question regarding one of the participants in the proposed settlement among the parties in this proceeding. Ms. Becky Jo Clark is one of the proposed principals of Three Lakes Broadcasting, Inc. ("Three Lakes") the merged entity which, under the Settlement Agreement filed with the Presiding Judge on May 4, 1992, is proposed as the permittee for Clemson, South Carolina in this proceeding. Ms. Clark also holds an interest in Alee Cellular Communications, ("Alee") a cellular licensee. Alee is a party in CC Docket No. 91-

No. of Copies rec'd 044
List A B C D E

142, wherein issues with character overtones have been raised against numerous cellular licensees, including Alee. The Presiding Judge is concerned with how Ms. Clark's and Alee's involvement in that proceeding impact upon the settlement proposal in this proceeding.

2. CBI acknowledges that the issues currently under litigation in the cellular hearings may adversely impact on CBI's principals' qualifications to participate in Three Lakes in this proceeding. See Policy Statement and Order, In re Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 3253 (1990).¹ However, CBI submits that a conditional approval of the proposed settlement among the parties in this proceeding is not in the public interest. The litigation in CC Docket No. 91-142 will delay the issuance of a construction permit to Three Lakes Broadcasting, Inc., and would delay institution of new FM service to Clemson, South Carolina. Additionally, a conditional grant is not acceptable to any of the principals of the merged entity proposed as the permittee under the pending Joint Petition; none of the parties are willing to risk the delays and uncertainties

¹The rule promulgated by the Commission, 47 C.F.R. §1.17, applies only to written matter submitted in response to Commission request. Here, the broadcast application form did not request information regarding cellular holdings. Alee's license had not been designated for hearing, and as yet, there has been no final adjudication in the cellular hearings. Even assuming, in any event, that CBI should have reported the designation of Alee's license for hearing, CBI will demonstrate, at the time of filing of an Amendment to the Settlement Agreement herein, that any failure to report the designation of Alee's license for hearing in this proceeding was inadvertent and unintentional, and that no intentional misrepresentation to the Commission was intended.

regarding construction of the proposed FM station that would stem from the outcome of the cellular hearings, and the consequent risks to their financial investments to date. Thus a conditional grant is unacceptable both from a public interest viewpoint, and from a private viewpoint.

3. The parties in this proceeding universally agree that a comparative hearing in this proceeding would be an inefficient means by which to promote FM service in Clemson, and have, since the release of the Presiding Judge's MO&O and their respective consideration of the matters raised therein, renegotiated their original settlement agreement submitted on May 4, 1992. Golden Corners Broadcasting, Inc., ("GCBI") CBI and Fisher Communications of Clemson, Inc. ("Fisher") have agreed that GCBI will reimburse both CBI and Fisher for their expenses in return for dismissal by CBI and Fisher of their respective applications, and will remain as the sole surviving applicant. The merged entity, Three Lakes Broadcasting, Inc. will be dissolved, and will no longer be proposed as the permittee of the new FM Station in Clemson, SC. Neither of the principals of CBI will have any ownership interest in GCBI. The Parties will submit a Joint Amendment to Joint Petition for Approval of Settlement Agreement, and an Amendment to Settlement Agreement setting forth the changes in the original settlement proposal within the next 5 business days, and will request approval of the amended Settlement Agreement, grant of a construction permit to GCBI, and dismissal of Fisher's and CBI's applications.

4. With CBI's dismissal, the dissolution of Three Lakes, and a grant to GCBI, the questions raised by Ms. Clark's participation in Three Lakes will be moot. There is no prohibition on dismissal of an application with outstanding questions or potential issues, since those may always be resolved at a later date, should the applicant or principal come before the Commission again. Any issues regarding Alee can be resolved in the cellular hearings.

WHEREFORE, CBI respectfully requests that the Presiding Judge accept the instant Comments, pursuant to a subsequent joint filing by the Parties of Amendments to the pending Joint Petition and Settlement Agreement.

Respectfully submitted,

CLEMSON BROADCASTING, INC.

By: Denise B. Moline
Denise B. Moline
Its Attorney

Allen, Moline & Harold
10500 Battlevue Parkway, Suite 200
P.O. Box 2126
Manassas, VA 22110

(703) 361-2278

June 19, 1992

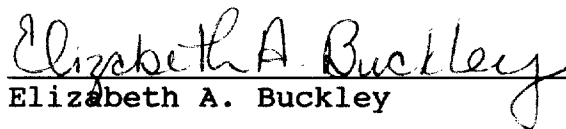
CERTIFICATE OF SERVICE

I, Elizabeth A. Buckley of the Law Firm of Allen, Moline & Harold, do hereby certify that I have caused to be served, this 19th day of June, 1992, by First-class mail, postage prepaid, a copy of the foregoing "Notice of Appearance" on the following:

- * Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 213
Washington, D.C. 20554
- * Paulette Laden, Esq.
Hearing Branch
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554
Counsel for the Mass Media Bureau

Barbara L. (Pixie) Waite, Esq.
Benable, Baetjer, Howard & Civiletti
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005-3917
Counsel for Golden Corners Broadcasting, Inc.

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
Counsel for Fisher Communications of Clemson, Inc.


Elizabeth A. Buckley

*Courtesy Copy-Hand Delivered